

15/12/23

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1683/2023

Hav Raj Mohamad (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. U.S. Maurya, Advocate

For Respondents : Mr. R.S. Chillar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

"(a) Direct Respondents to grant Disability Element wef 31-10-2022 (from next date of discharge) after rounding off from 33.5% to 50% as per (Annexure A-17 Colly); with 12% interest as applicant's disease originated first time after 13 years of service in Armed Forces and respondents denied for grant of Disability Pension only on the ground of disability PRIMARY HYPERTENSION occur in Peace Station & Neither Attributable Nor Aggravated (NANA). The question involved in this case on the matter of Primary Hypertension, Neither Attributable Nor Aggravated (NANA) and PEACE STATION is no longer res integra, as the same had already been settled by this Hon'ble Tribunal in the cases of Sgt Surendra Pal (Retd) vs. Union of India & Ors.

OA 2249/2022 order dated 31-05-2023 by Hon'ble AFT (PB) New Delhi, Sgt Dharmendra Kumar Jha Vs. UOI & Ors. (OA 360/2013 order dated 20-08-2014 by Hon'ble AFT (PB) New Delhi and vide page No. 26 of Raksha Mantri's Committee of Experts-2015 (Annexure A-13 Colly). On the matter of disease neither attributable to nor aggravated by military service by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India & Ors (Civil Appeal No. 4949 of 2013 judgment dated 02.07.2013), Union of India Vs. Rajbir Singh (Civil Appeal No. 2904 of 2011 judgment on 13.02.2015 along with the 26 connected appeals) (Annexure A-11), Union of India & Ors. Vs. Angad Singh Titaria (Civil Appeal No. 11208 of 2011 judgment on 24.02.2015) and latest judgment Ex. Gnr. Laxmanram Poonia (Dead) Through Lrs. Vs. Union of India and Ors. (Civil Appeal No. 2633 of 2017 judgment dated 22.02.2017). On the matter of 14 days charter duties applicant case is squarely covered and has no relevancy to reject Disability Pension by the Hon'ble as adjudicated in para 11 of the case of Jyotsana Bhatnagar Vs. UOI & Ors (OA No. 799/2016 order dated 05-04-2017 passed by Hon'ble AFT (PB) New Delhi (Annexure A-14).
(b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.
(c) Award cost of the OA to the applicant."

BRIEF FACTS

2. The applicant was enrolled in Indian Army as Sepoy on 26.10.1998 and discharged from service on 31.10.2022 under Army Rule 13(3) item I (i) on fulfilling the conditions of

his enrolment after rendering total 24 years and 04 days of regular service. The applicant was found fit to be released in low medical category S1H1A1P2(P)E1, for the disability of "Primary Hypertension (Old) assessed @ 30% and S1H1A1P3(P)E1 for the disability of "Obesity". The Release Medical Board (RMB) held on 21.05.2022 assessed the applicant's disabilities '(i) Primary Hypertension @ 30% for life and (ii) Obesity @ 05% for life with composite assessment of disabilities @ 33.5% for life, however, the net qualifying percentage for disability was nil for life as the disability was adjudged as neither attributable nor aggravated to military service

3. On adjudication, the initial claim of the applicant for grant of the disability pension was rejected by the competent authority i.e. OIC The Grenadiers Records considering the disabilities as neither attributable to nor aggravated by military service and the said decision was communicated to the applicant vide letter No. 2692506A/D-Pen dated 17.11.2022 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within six

months from the date of receipt of the above mentioned letter. The first appeal dated 22.12.2022 preferred by the applicant was rejected by the appellate authority and was communicated to the applicant vide letter No. 2692506A/1st Appeal/D-pen dated 20.05.2023. Thereafter, the applicant submitted an application dated 04.03.2023 under RTI Act, 2005, for providing of medical documents which were provided to him accordingly. The applicant submitted second appeal dated 19.06.2023 which was not replied to by the respondents till the filing of the instant OA which was so filed on 26.06.2023. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT Act, 2007.

CONTENTION OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant joined Indian Army as Sepoy on 26.10.1998 and was discharged from the service on 31.10.2022 in the after rendering 24 years and 04 days of long service in the Army during which he suffered with the said disability.

5. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel explained about the stressful and challenging conditions of service undertaken by the applicant during his service tenure. The learned counsel submitted that the applicant was posted at various stations and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner.

6. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgments of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, CA No 2904 of 2011 in case of **Union of India & Ors. Vs Rajbir Singh** dated 13 February, 2015, Civil Appeal No. 11208/2011 in

case of ***Union of India & Ors. Vs. Angad Singh Titaria*** and etc., wherein, similarly situated personnel were given relief.

7. *Per contra*, the learned counsel for the respondents submits that the Primary Hypertension disability is basically a lifestyle related disorder and in the case of the applicant it had its onset in peace station. The learned counsel further submitted that the applicant from his enrollment till the time of discharge, has served only in Jabalpur (MP) i.e. a peace station and the onset of his first disability of Primary Hypertension occurred in October 2011 where there has been no close time association of military service with onset and progression of the disability and hence, the disability is NANA as per para 43 of GMO (Military Pension) 2008 and applicant's second disability namely Obesity had its onset in the year 2022 which is also certainly a lifestyle related disorder and the same has been assessed @ 05% which is not admissible in respect to Para 53(a) of Pension Regulations for the Army 2008 (Part-1). Hence, OA deserves to be dismissed.

8. The learned counsel for the respondents also submitted that the applicant was found overweight at the time of onset of the disease and even at the time of RMB. The learned counsel for the respondents submits that the disability of Hypertension of the applicant is directly related to his overweight condition and in relation thereto the applicant has submitted a weight of the applicant from 2011 onwards which is reproduced to the effect:-

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Ser No.	Dt of Med Exam	Height (in CM)	Auth Body Weight (in KG)	Actual Body Weight (in KG)	Remarks
(a)	22 Oct 2011	176	69	86	Opinion dt 22 Oct 2011 is att.
(b)	25 Apr 2012	176	69	86	AFMSF-15 dt 25 Apr 2012 is att
(c)	28 May 2020	177	71.5	70.6	AFMSF-15 dt 28 May 2020 is att
(d)	21 Apr 2022	177	72	93	AFMSF-15 dt 21 Apr 2022 is att
(e)	31 May 2022	177	72	90	AFMSF-16 dt 31 May 2022 is att.

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ANALYSIS

9. It is a fact that the applicant vide RMB dated 21.05.2022 has been assessed with the disabilities of Primary Hypertension @ 30% and Obesity @ 05% which have been attributed as NANA by the RMB. In so far as, the disability of 'Obesity' @5% for life is concerned, the disability

is assessed below 20% and does not fulfill the twin criteria as per Para 53(a) of Pension Regulations for the Army 2008, (Part-I) and hence, the said disability is not admissible.

10. We may now consider the contention raised by the learned counsel for the respondents to the effect that the applicant's disability, namely, Primary Hypertension was caused due to the applicant being overweight. Pursuant to the direction of the Tribunal, a weight chart with regard to the applicant has been filed by the respondents giving year-wise data regarding weight of the applicant during the period from July, 2010 to December 2011. The weight chart along with an addition of "% of Overweight" column is tabulated as follows:-

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Ser No.	Dt of Med Exam	Height (in CM)	Auth Body Weight (in KG)	Actual Body Weight (in KG)	% of Overweight	Remarks
(a)	22 Oct 2011	176	69	86	24.64%	Opinion dt 22 Oct 2011 is att.
(b)	25 Apr 2012	176	69	86	24.64%	AFMSF-15 dt 25 Apr 2012 is att
(c)	28 May 2020	177	71.5	70.6	-1.26%	AFMSF-15 dt 28 May 2020 is att
(d)	21 Apr 2022	177	72	93	29.17%	AFMSF-15 dt 21 Apr 2022 is att
(e)	31 May 2022	177	72	90	25.00%	AFMSF-16 dt 31 May 2022 is att.

11. A perusal of the weight chart produced hereinabove reveals that at the time of onset of the disability, namely *Primary Hypertension* in October 2011, the applicant's actual body weight exceeded the Ideal Body Weight (IBW), thereby indicating that he was overweight by 17 kgs. Though, he succeeded in reducing his weight in the year 2020, but he subsequently regained weight, which not only made him overweight but also placed him in the obese category. Even during the Review Medical Board (RMB), the applicant was found to be obese by 25%. This shows that the applicant failed to maintain his ideal weight, which could have been effectively managed through regular physical exercise and a controlled dietary regimen.

12. The publication released by World Health Organization titled "Hypertension" assessed through internet on 16.03.2023 was examined by us and which reads to the effect:-

"Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.

People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.

Things that increase the risk of having high blood pressure include:

- **older age**
- **genetics**
- **being overweight or obese**
- **not being physically active**
- **high-salt diet**
- **drinking too much alcohol**

Risk factors

- **Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity, consumption of tobacco and alcohol, and being overweight or obese,”**

this bulletin of WHO specifically brings out the effect of overweight/obesity on hypertension.

13. Additionally, this Tribunal, while dealing with disability pension claims for the disabilities of ‘Obesity and Hypertension’ in O.A. No. 1656/2016 titled *Ex HFO Gyanendra Singh vs Union of India & Ors.*, dismissed the case on merits, which was subsequently upheld by the Hon’ble Supreme Court in Civil Appeal Diary No. 21017/2019 decided on 08.07.2019.

CONCLUSION

14. In view of the aforesaid contentions and the parameters referred to above, and considering the fact that the applicant was overweight at the time of onset of the

disability, namely Primary Hypertension, and further in view of the established correlation between Primary Hypertension and excess body weight, we are of the considered view that the applicant's weight was a contributory factor in the onset of the said disability. Accordingly, the applicant is not entitled to the grant of disability element of pension. We, therefore, find no merit in the claim and the OA 1683/2023 stands dismissed.

15. There is no order as to costs.

Pronounced in the open Court on this day of 2nd
September 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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